

All defendants charged with a felony offense regardless of where the offense occurred must be arraigned at the San Luis Obispo Court location. Felonies on entry of a plea of not guilty will be set for a preliminary hearing. This hearing will be set within 8 to 10 court days of the entry of plea if the defendant is in custody and within 14 to 16 court days if he or she is not.

**(b) Date of Arraignment**

(1) Arresting agencies releasing persons prior to an arraignment calendar hearing must fix the date of the appearance of the person arrested in the proper location of this Court at a regularly scheduled arraignment calendar not more than two weeks for felony defendants and four weeks for all other defendants from the date of such release. If a further appearance date has been set by the Court then the date of appearance fixed by the law enforcement agency must be that date.

(2) Whenever an arresting agency releases a defendant and sets a court appearance date it must notify the clerk of the court in which the defendant is to appear.

**(c) Multiple Cases**

**(1) Felony Defendants:**

**(A) Probation Violations**

If a defendant is charged with a felony offense, all pending misdemeanor probation violations will be transferred to the San Luis Obispo Branch where the felony case is pending. If a defendant is released upon posting bail on a warrant issued for a misdemeanor probation violation and a felony is pending, the defendant will be directed to appear in the San Luis Obispo Branch on all of these cases.

**(B) Pending Misdemeanor Cases**

If a defendant in custody is charged with a felony offense and a separate misdemeanor offense, all pending misdemeanor cases will be transferred to the San Luis Obispo Branch. The defendant will appear in this branch on all these cases.

**(2) Misdemeanor Defendants**

When a misdemeanor defendant is in custody, the defendant will be arraigned on all pending cases in the San Luis Obispo Branch. However, should the defendant be released on bail or citation prior to the appearance the defendant will be directed to appear in the branch from which the warrant was issued or in which the case is pending. (Amended eff. 7/1/02)

**RULE 10.05**

**CALENDAR EVENTS: MISDEMEANORS**

**(a) Arraignments**

The defendant or counsel will be given a copy of reports and complaint at the arraignment. Stipulations for independent blood analysis should be made at arraignment. Pleas will be entered. Since the District Attorney and Public Defender may be present, some plea negotiation may be accomplished at this event. Following entry of a not guilty plea case will be set for a Pretrial Conference and Trial Setting Conference.

**(b) Motions**

Any motions, except in limine motions where a stipulation cannot be obtained, must be noticed and heard prior to the Trial Setting Conference. No further motions will be heard on the case. If a motion to strike a prior cannot be heard at this time because of lack of documentation it will be heard at the time of sentencing. VC 41403(c). In Limine Motion: Any in limine motion must be filed in writing five days before the Readiness Conference. The motion will be heard at the Readiness Conference.

**(c) Pre - Trial Conferences**

The District Attorney and defense counsel must discuss the case and attempt to resolve the case at the pre trial conference.

**(1) Diversion**

If defendant is to be considered for diversion, referral must occur no later than this event.

**(d) Trial Setting Conference**

If there is not a disposition of the case, a Readiness Conference and Trial will be set. All discovery is to be complete by this conference and all additional investigation such as blood re-analysis, is to have been completed.

**(e) Court Trial**

If a Court Trial is requested at arraignment this will be set and a Pre Trial Conference will only be set upon request. Trial will be set within four weeks.

**(f) In Custody Defendant**

Pre Trial Conferences for in custody defendants will be set on the in-custody-arraignment calendar.

**(g) Readiness Conference**

The purpose of this conference is simply to confirm the matter for trial the following day. No negotiated pleas will be accepted unless good cause is shown. Once the matter is confirmed, no negotiated pleas will be accepted. On the date of trial the case will be either tried, dismissed or a defendant will be required to plead to all counts. (Subd.(e), added eff. 7/1/1989, amended eff. 7/1/1992.)

**(h) Continuance by Clerk**

(1) A clerk of this Court may upon the request of the defendant or counsel, continue the initial arraignment of a defendant for up to 14 calendar days.

(2) This authorization does not apply to any case in which a defendant has been charged with a felony.

(3) This authorization does not apply to any case in which a defendant has been released on bail.

(i) **Court Surrenders**

(1) **Probation Violations**

When a warrant has been issued for failure to comply with a term or condition of probation, any surrender on the warrant must occur at the County Jail or police department. Bail may be posted with the clerk and the warrant must be recalled and the case placed on calendar.

(2) **Failures to Appear**

A defendant who has failed to appear in Court in a misdemeanor case or infraction case may surrender to the Court under the following circumstances.

(A) This is the first failure to appear in this case, and

(B) At least 24 hours notice is given to the clerk, and

(C) The request to calendar is made by the defendant in person or by counsel, and

(D) The date of the surrender is no more than seven days after the failure to appear, or in the alternative, if more than seven days has elapsed since the failure to appear, the warrant has not been signed. (Added eff. 1/1/1987) (Amended eff. 7/1/02)

(j) **Appearance by Counsel**

*Pursuant to statutory authority (Penal Code Section 977(a)(1)) and case law, a defendant may appear by counsel if the accused is charged with a misdemeanor only, except as provided in Penal Code Section 977(a)(2), which states "If the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, the accused shall be present for arraignment and sentencing."*

*Appearance by counsel without the defendant being present shall be deemed an appearance on behalf of the defendant. The failure of counsel to have all necessary authority and authorization to act for the defendant at any appearance is grounds for the Court to order the defendant's personal presence at the next appearance. If a represented defendant is not present when the case is calendared for trial or other evidentiary hearing, the attorney of record shall notify the defendant of the date, time, and place of the trial or hearing. (Effective 7/1/2002)*

**RULE 10.06**

**CALENDAR EVENTS: FELONIES**

(a) **Felony Team:** All felony cases, including probation violations, will be assigned to a specific department in the felony team. The team will be such judges as are assigned by the presiding judge. (Eff. 7/1/1999)

(b) **Case Assignments:** ALL ASSIGNMENTS MUST BE FOR ALL PURPOSES.

(1) **Single Defendant Cases:** Case assignment between the three judges assigned to the felony team shall be alphabetically:

A - Gn

Go - O

P - Z

(2) **Multiple Defendant Cases:** Multiple defendant cases will be assigned sequentially to each judge assigned to the felony team.

(3) **Time of Assignment:** Assignments will be made upon the filing of a felony complaint, indictment or felony probation violation. Once an assignment is made, all subsequent felony complaints, indictments and felony probation violations will be assigned to the judge receiving the initial assignment.

(4) **Multiple Cases:** Upon the filing of a felony complaint, indictment or felony probation violations, all pending felony or misdemeanor cases and/or probation violations will be assigned to the same judge. This judge will handle these cases on an all purpose assignment through sentencing. Any felony probation violations will be assigned to the same judge unless the defendant is a codefendant in a multiple defendant case, in which case the probation violation will be assigned to the judge assigned to the multiple defendant case. If a felony is reduced to a misdemeanor and the defendant placed on probation, any subsequent probation violations will be assigned to a judge handling misdemeanor cases.

(5) **Assignment for all Purposes:** Assignment to a judge for all purposes means assignment for all proceedings in the matter from arraignment on the complaint through trial and sentencing. (Eff. 7/1/1999)

For all purposes includes all court proceedings that apply in each case.

Any motions under Code of Civil Procedure § 170.6 must be filed within ten (10) days after the appearance of a party.

Any motion under Code of Civil Procedure § 170.6 filed at the superior court stage of the proceedings will be considered untimely, unless it is shown that the party did not have the opportunity to file it earlier.

**(c) Calendar of Events:**

**(1) Arraignment on Complaint**

Arraignment must proceed in accordance with P.C. §§ 858, 859, 859a, 859b and 860. The district attorney provides initial discovery with the complaint. Disposition discussions are encouraged. Seven to ten days will normally be allowed for a defendant to retain counsel of his or her choice. Following entry of a not guilty plea, the case will be set for a pre-preliminary hearing and preliminary hearing. These hearings will be held at the courts located in San Luis Obispo unless the court, for good cause, orders otherwise.

**(2) Pre-preliminary Hearing**

A pre-preliminary hearing will be held to confirm readiness for the preliminary hearing and to provide an opportunity for discussions of case disposition. At this hearing, the parties should consider applicable diversion procedures.

**(3) Preliminary Hearing**

The preliminary hearing must be held pursuant to Title 3, Chapter 7 of the Penal Code.

**(4) Trial Setting Conference**

A trial setting conference will be set. The prosecution and defense are encouraged to discuss disposition and scheduling of future case events with the court. In the absence of a disposition the matter will be set for jury trial and readiness conference.

**(5)(a) Motions**

Counsel must consult the court (clerk) for available dates for motions requiring an evidentiary hearing. Motions must be calendared at least one week before the readiness conference.

**(b) Motion to Set Aside Information**

A motion to set aside the information pursuant to Penal Code § 995 will be heard by an assigned judge.

**(6) Readiness Conference**

A readiness conference must occur prior to trial. The purpose of this conference is simply to confirm the matter for trial the following week.

**(7) Jury Trial**

Trial will proceed pursuant to Title 7, Chapter 2 of the Penal Code. No negotiated pleas will be accepted. The case must either be tried, dismissed or the defendant must plead to all counts. The trial will be set, except for good cause, no later than 60 days from the date of filing the information.

**(8) Probation Violation Hearings**

Hearings on violations must be heard as early as possible.

(Amended eff. 7/1/02)

**RULE 10.07****LAW AND MOTION PROCEEDINGS****(a) Location**

All motions except Penal Code section 995 motions will be held before the judge to whom the case is assigned. Upon filing a Penal Code section 995 motion, counsel must, if denied, request such motion be assigned to another judge on the felony team. (Eff. 1/1/1998)

**(b) Notice of Motion**

All motions and notices must be in writing and, in addition to specifying the date and time of the hearing, must specify the grounds of the motion. All motions must be in writing and give not less than ten (10) calendar days notice unless such requirement is shortened by court order or waived. The papers intended to be used by the moving party must be attached to, and served and filed with, the notice of motion. All citations of authority must include the official reporter citation and the West Publishing (unofficial) citation. Failure of either party to file and serve the points and authorities may be deemed by the court to be a concession to the motion and/or that the motion is without merit. Where the review of a transcript is necessary, the pertinent transcript testimony must be summarized with a specific page and line reference cited.

**(c) Date of Hearing**

Any motion requiring a hearing must be noticed for a date certain after confirming such date with the court clerk prior to noticing the motion. The motion must be noticed and heard prior to the Trial Setting Conference for misdemeanors and prior to the readiness conference for felonies.

**(d) Format**

The first page of each motion must specify immediately below the number of the case:

- (1) The date, time and location, if ascertainable, of any scheduled or noticed hearing;
- (2) The nature or title of any attached document other than an exhibit; and
- (3) The trial date, if set.

Documents bound together must be consecutively paginated.

**(e) 1538.5 Motion****(1) Felony**

Motions by defendant to suppress or return evidence will be heard in conjunction with and at the same time as a Preliminary Hearing or on a date set.

(A) A written noticed motion is not required if a motion based upon Penal Code section 1538.5 is to be heard at the Preliminary Hearing. The prosecutor must be prepared at all such hearings to justify, legally and factually, all seizures of proffered evidence; however, upon a showing of surprise the case may be continued. If a Penal Code section 1538.5 motion is made other than at a preliminary hearing, a written notice that complies with Rule 10.07(b) is required.

(B) A written noticed motion pursuant to Penal Code section 1538.5 must specifically describe and list the evidence which is the subject of the motion to suppress; and must specifically state the theory or theories which must be relied upon and urged for the suppression of the evidence; and cite the specific authority or authorities which will be offered in support of the theory or theories and must set forth a statement of facts upon which such theory(ies) is based upon which suppression of the evidence is urged. It must also conform to Rule 10.07(b).

**(2) Misdemeanors**

Motions by defendant to suppress or return property will be heard at least 10 calendar days in advance of the trial date (PC 1538.5(g)). Notice of the date of such hearing must be given in compliance with Rule 10.07(b) above and must specifically list and describe the evidence sought to be suppressed or returned, must state specifically the theory(ies) which will be relied on and urged for suppression or return of the evidence, must set forth a statement of facts upon which such theory(ies) is based, and must cite the specific authority(ies) which supports the theory(ies) for such suppression. (Amended eff. 7/1/1990.)

**(3) Hearing**

Defendant must be prepared to prove standing to object, and in instances of warrantless searches, must be prepared to prove

- (a) That a seizure of the evidence took place, and
- (b) That it was done so without a warrant.

(Amended eff. 7/1/02)

**RULE 10.08****CONTINUANCE POLICY**

The welfare of the People of the State of California requires that all proceedings in criminal cases must be set for trial and heard at the earliest possible time. (PC 1050). Therefore it is the policy of this court to maximize the use of judicial time and avoid continuances, resetting and unnecessary trailing of cases. Any motion to continue in a criminal proceeding must comply with Penal Code Section 1050. Further this Court adheres to a no trial continuance policy -- when a courtroom event is scheduled that event should take place as scheduled.

**(1) Responsibilities of Counsel**

(A) Counsel's attention is directed to Rule 6-101 of the Rules of Professional Conduct of the State Bar of California "Failing to Act Competently"

(B) A member of the State Bar must not

(1) Accept employment or continue representation in a legal matter when the member does not have sufficient time, resources, and ability to perform the matter with competence, or

(2) Repeatedly accept employment or continue representation in legal matters when the member reasonably should know that the member does not have or will not acquire before performance is required, sufficient time, resources and ability to perform the matter with competence . . . "

(C) Counsel should not set a case if they are committed to another trial during that period or if they are going to be on vacation. This includes cases set in Superior Court and cases in different branches and departments of this Court. Counsel should not schedule other cases to begin if they have another matter set in this Court. Neither reason constitutes "good cause" for a continuance.

(D) Motions, pretrials and trials are to be heard at the time and date set.

(E) **Substitute Counsel**

An attorney who appears for another attorney is representing the defendant then before the Court. An attorney who makes such an appearance is required to do so competently. Calif. Rules of Professional Conduct 6-101(A)(1). Such an attorney is expected to be prepared to carry out and perform any duties required at that calendar event; should a continuance be required it is counsel's responsibility to have complied with this policy and to know when the other attorney will be available to appear; if a case is not to be tried, counsel should have authority to dispose of the case. Should these rules not be complied with, sanctions may be applied against this attorney. (CCP 128.5, CCP 177.5, Calif. Rules of Court 227.) At the next scheduled calendar event, the counsel of record must file a declaration with the Court explaining the inability to be present at the last calendar event.

(F) Counsel should not delay in filing and serving proper motions. Failure timely to file or serve without good cause may result in the imposition of sanctions.

(G) Counsel should subpoena witnesses as soon as a case is set for hearing or trial.

(H) Counsel should not accept representation of a defendant unless there is sufficient time to adequately prepare before the next scheduled event.

**(2) Motions to Continue**

Motions to continue must comply with Penal Code Section 1050 and must be submitted in duplicate. Courtroom events will be continued only when extraordinary circumstances, not within the control of the parties and which were not foreseeable at the time of setting the date of the event, necessitate a continuance. In ruling on motions to continue, the following factors will be taken into consideration:

(A) The time when the need for the continuance arose, and the diligence of counsel in bringing the need for a continuance to the attention of the Court and opposing counsel at the earliest possible date and in attempting to avoid a continuance;

(B) The proximity of trial, the age of the case, the established time limits for processing cases, and the nature of any previous continuances or prior orders entered in the case;

(C) The earliest possible date all parties and the court will be read to proceed;

(D) Whether the continuance may be avoided by substitution of attorneys or witnesses, or by the use of stipulations as to testimony, and

(E) The injury or inconvenience caused to the party not requesting the continuance. [Subd. (e)(2) amended eff. 7/1/1990.]

**(3) Good Cause**

Continuances will only be granted on the showing by competent evidence of good cause. The facts proven justifying good cause and the length of continuance must be set forth on the record. Good cause is NOT shown by the following:

(A) Counsel's vacation or commitment to another trial or proceeding except as provided in PC 1050(g),

(B) Failure of a client to adhere to a financial agreement with his attorney,

(C) Failure to expeditiously prepare for trial,

(D) A witnesses' vacation or attendance at school unless this is accompanied by a showing of the witnesses' unavailability, that the testimony is material and necessary and that the party seeking the attendance exercised due diligence to secure the presence of the witness,

(E) Informal diversion,

(F) A civil compromise pursuant to PC 1378,

(G) Other pending cases,

(H) Negotiations not yet completed.

(Misdemeanor cases coming within (E) and (F) can be conditionally dismissed on waiver of the prohibition against refiling).

**(4) No Stipulated Continuances**

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No continuance will be granted solely because all parties agree thereto.

**(5) Sanctions**

The failure to adhere to this policy will result in the imposition of sanctions and the assessment of reasonable costs. CCP 128.5, CCP 177.5, Calif. Rules of Court 227.

**(6) Trailing**

Should it be necessary that cases be trailed for hearing or trial, they will be trailed day by day. The case will be called each day at 11:30, 4:30 and the next day at 8:30. When a case is trailing the defendant and counsel, except in extraordinary circumstances, must be present when the case is called. (Amended eff. 7/1/02)

**RULE 10.09**

**PHOTOGRAPHING OR RECORDING COURT PROCEEDINGS**

All photographing, recording and broadcasting in the courtrooms of this Court must be in accordance with California Rule of Court 980 as modified by the following:

**(a) Permission to Film Witness**

There must be no photography, recording (audio or video), filming or broadcasting of the testimony of any witness not employed by a governmental agency without the permission of such witness and the court.

**(b) No Audio Broadcast**

There must be no broadcast of audio recordings of court proceedings without permission of the court.

**(c) Media Rules**

Requests for media coverage must be submitted

- (1) To the Clerk of the Court five court days in advance,
- (2) For each appearance, and
- (3) In quadruplicate (original and 3: original for file, copies for the clerk to distribute to each side, and a copy for the media's file). (Amended eff. 7/1/02)

**RULE 10.10**

**TRIALS**

**(a) Location**

**(1) Defendant in Custody**

If the defendant is in custody the trial of any criminal case will be held at the court located in San Luis Obispo unless for good cause the court transfers the trial to another location.

**(2) Defendant Out of Custody**

If the defendant is not in custody the trial of any criminal case will be held at the court location in the jury district in which the offense is alleged to have occurred if the defendant is charged with a misdemeanor or infraction, except all misdemeanor jury trials will be conducted in San Luis Obispo. All defendants charged with a felony will be tried in San Luis Obispo.

**(3) Change of Location**

Upon a showing of good cause, a change in court location may be requested in writing and served upon the opposing party as will be honored providing that such request is made at least ten (10) calendar days before the hearing. However, in no case will a request be honored if a jury panel has already been notified to appear. The opposing party shall have the right to request a hearing on the question of whether the matter should be transferred. The Court may, on its own motion, order any misdemeanor trial transferred to any court location.

**(b) Pretrial Conference -- Misdemeanor Defendants**

All cases in which a jury trial is not waived must be set for a pre trial conference and a trial setting conference before a jury trial is set if time for trial is waived. If time for a jury trial is not waived a pre trial conference will be set at the time a jury trial is set. (Amended eff. 7/1/02)

**RULE 10.11**

**SENTENCING**

**(a) Probation Modification**

**(1) Notice Requirements**

The court requires 24 hours notice to calendar a motion for modification of probation. The request to place the motion on calendar must be made by the defendant in person or by counsel.

**(2) Jail Time Modifications**

Defendants who fail to appear at jail may not ordinarily request their case to be placed on calendar for jail time modification since they are already in violation of probation.

Exception: Request for "modification" of jail time may be calendared provided that not more than seven days has elapsed since the failure to appear at the jail and/or probation has not been revoked and a bench warrant issued.

**(3) Multiple Modification Request**

If a case is twice scheduled for modification and there is no appearance, the case cannot be placed on calendar for the same modification. (Amended eff. 7/1/1988)

**(b) Fine Payments****(1) Accounting Fee**

An accounting fee must be established by order of the court for fines paid directly to the court to cover the costs of accounting required by fine payments. The accounting fee may be waived by either the Director of Criminal Operations, or Court Accountant under the following conditions:

(A) The full amount of the fine was paid on or before the original due date established at the time of sentencing for the payment of the Accounting Fee, and;

(B) One payment was made, and

(C) The payment was not returned by the bank for any reason. In all other cases the imposed accounting fee may not be waived except by a judge or commissioner.

**(2) Cash Bail**

In all cases wherein the defendant has posted cash bail and the court imposes a sentence which includes a fine payable in installments, any cash bail must be applied toward the fine. This must not relieve a defendant of making payment at such time and in such amount as ordered by the court, but must be credited to reduce the fine balance.

**(3) Failure to Pay Fine**

On probation violations where a defendant is on summary or bench probation and where the only violation is non-payment of the fine upon payment of the fine in full the clerk must be authorized to have the warrant recalled and to reinstate probation on the same terms and conditions as previous. The clerk must advise the defendant of the reinstatement of probation by first class mail, file proof of service and also verify that there are no other violations prior to such reinstatement.

**(c) Conditional Sentence**

Informal probation, summary probation or bench probation are conditional sentences as defined in Penal Code Section 1203.

**(d) Proof of Compliance with Conditions of Probation**

In criminal and traffic cases in which a defendant has been placed on informal, summary, or bench probation with a requirement by a certain date that the defendant show:

(1) Proof of completion of alternate work service;

(2) Proof of obtaining a license;

(3) Proof of payment of restitution;

(4) Proof of fine payment;

(5) Proof of completion of DWI or AA attendance; or reappear in court on a certain date; the clerk is authorized to receive and file the appropriate proof and to take the matter off calendar.

In cases where there is some question as to whether the proof is appropriate, the clerk will so notify the defendant and advise the defendant to reappear in court.

**(e) Jail Sentences - Credit for Time Served**

Unless otherwise indicated by a sentencing judge, when a defendant is ordered to serve time in the County Jail either as a sentence or condition of probation, the defendant must be deemed entitled to credit for any days actually served in custody. Where possible, the sentencing judge must determine the total number of actual days to be credited to a defendant's time so that the date of admission and release from custody can be specified.

(Amended eff. 7/1/02)

**RULE 10.12****TRAFFIC AND ILLEGAL PARKING****(a) Traffic School****(1) Eligibility**

This Court will permit those eligible pursuant to California Rules of Court, Rule 851, to attend a California Department of Motor Vehicle approved traffic school as a means of obtaining a dismissal of a traffic citation. (Eff. 1/1/1998)

**(2) Dismissal**

The traffic citation or complaint will be dismissed upon the presentation of any required fees by the date specified for completion.

(A) A defendant must be given 13 weeks to attend and provide proof of completion and payment of required fees. No extension may be given.

(B) Traffic School may not be attended unless authorized by the Court.

**(b) Continuance by Clerk**

A clerk of this Court may upon the request of a defendant or counsel continue the initial arraignment of a defendant except for defendants released on bail.

(Amended eff. 7/102)

**RULE 10.13****TIME STANDARDS**

It will be the goal of the Court to dispose of cases within the following time limits.

Preliminary Hearing concluded within 30 days of first appearance and conviction or acquittal within 60 days of the date of filing the information or indictment.

Misdemeanor: Conviction or acquittal of defendant or dismissal of case within 90 days of first appearance. Attorneys substituting into a case will be expected to handle the case within these time standards. (Amended eff. 7/1/02)

#### **RULE 10.14**

##### **TRIAL BY DECLARATION**

###### **(a) Adoption of Trial by Declaration Procedure**

This court adopts the provisions of Vehicle Code Section 40902 except as limited herein.

###### **(b) Eligibility**

Any defendant must be afforded a trial by declaration for such charges as allowed by VC 40902 upon written request. (Eff. 1/1/1998)

###### **(c) Requirement for Posting of Bail**

Any person requesting a trial by declaration must be informed of the requirement to post bail in the full amount specified by the bail schedule. Failure to post bail within fifteen (15) days of notice by the clerk must be deemed to be a withdrawal of the request for trial by declaration. Thereafter, a person must not be afforded a trial by declaration in that case.

###### **(d) Time Limits**

A person having posted bail for a trial by declaration must adhere to the time limits set by the clerk of the court for submission of any required declarations, exhibits or other evidence. Failure to submit said evidence in a timely manner must result in a bail forfeiture without further proceedings.

###### **(e) Trial De Novo**

A person dissatisfied with the decision of the court may request and must be provided a trial de novo provided the request is made in a timely manner. A timely manner must be the same time as provided for filing a notice of appeal.

###### **(f) Evidence**

Pursuant to VC 40902(c) this Court will permit all relevant evidence police reports, written declaration of the defendant or any witness, photographs, drawings, diagrams or other probative evidence.

(Amended eff. 7/1/02)

#### **RULE 10.15**

##### **COUNTER ARRAIGNMENTS**

###### **(a) Counter Arraignment Defined**

A counter arraignment is a procedure whereby a defendant charged with violations of law may offer a plea of guilty at the office of the clerk without the necessity of appearance in court. When an appropriate waiver of rights form has been executed by defendant and approved by a judge or commissioner of the court, it is a judgment of the court.

###### **(b) Charges Eligible for Counter Arraignment**

Any infraction or misdemeanor charge whereby an appearance is not mandatory is eligible for a counter arraignment.

###### **(c) Bail and Fine**

The fine imposed after a counter arraignment must be equal to the bail as set in the bail schedule.

###### **(d) Delayed Payments and Work Service**

Persons entering such a plea must be given a delayed due date for payment of the fine in full. The fine may be satisfied in whole or in part by performing community service with credit of \$10.00 for each hour of community service.

###### **(1) Fines Less Than \$300.00**

A fine less than \$300.00 must have a due date 13 weeks from date of counter arraignment.

###### **(2) Fines \$300.00 or More**

A fine of \$300.00 or more must be given a due date of 26 weeks from date of counter arraignment.

###### **(e) Responsibility for Community Service**

A person choosing to perform community service as full or partial satisfaction of a fine must make their own arrangements through the San Luis Obispo County Probation Department without a formal referral by the court.

###### **(f) Pay or Reappear Sentence**

The sentence for infractions must require the payment of the fine or the return to court by the due date. Failure to pay or reappear must result in an additional charge pursuant to Penal Code §853.7, increased bail and issuance of a bench warrant.

###### **(g) Pay or Serve Sentence**



The sentence for misdemeanor violations must be imposed pursuant to Penal Code §1205 and require the defendant to pay the fine by the due date or serve the sentence at the rate of \$50.00 per day. (Amended Eff. 7/1/2002)

**RULE 10.16**

**APPLICATION FOR WRIT OF HABEAS CORPUS OR CORAM NOBIS**

An application for writ of habeas corpus, coram nobis, mandamus or prohibition in a criminal proceeding must be presented to the supervising felony judge *except petitions for writs of mandamus, prohibition, or review (certiorari) in a case charging a misdemeanor or infraction must be addressed to the Appellate Division of the court pursuant to Rule 14.05.* (Amended Eff. 7/1/2002)

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**CHAPTER 11  
CIVIL (PROBATE) RULES  
(Amended Effective July 1, 2000)**

**PART ONE  
GENERAL PROCEDURAL GUIDE**

**RULE 11.101  
APPLICABILITY OF RULES TO ALL PROCEEDINGS**

All rules as hereinafter set forth must apply to estate proceedings, guardianships, conservatorships or trusts, except as otherwise specifically noted and to the extent not superseded by laws enacted after July 1, 2000. (Amended eff. 7/1/2002)

**RULE 11.102  
ADDRESSES AND TELEPHONE NUMBERS**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

County Government Center  
San Luis Obispo, CA 93408

Office	Address	Telephone
Clerk	County Government Center Room 385 San Luis Obispo, CA, 93408	(805) 781-5242
Court Investigator	1070 Palm Street	(805) 781-5424
Preapproved Matters	(Recording) (Web Site)	(805) 781-5178 <a href="http://www.callamer.com/~sloss">www.callamer.com/~sloss</a> <a href="http://www.slocourts.net">www.slocourts.net</a>

(Amended Eff. 7/1/2002)

**RULE 11.103  
PROBATE CALENDAR AND APPEARANCES BY COUNSEL**

(a) The scheduling of the date and time for the Probate Calendar will be announced by the Court in December for the following year. Please contact the Clerk for further information at (805) 781-5242.

(b) Appearance by counsel will be required in the following matters:

- (1) A contested matter;
- (2) A hearing on a petition for confirmation of sale of property;
- (3) An appointment of guardian or conservator;
- (4) A compromise of a minor's claim; and
- (5) When otherwise required by law or the Court.

(Amended eff. 7/1/2002)

**RULE 11.104  
TIME FOR FILING, SETTINGS, AND FILING FEES**

(a) The provision of California Rules of Court, Division II, Civil Law and Motion Rules, Rules 301-391 inclusive are expressly applicable to law and motion practice in the Superior Court of California, San Luis Obispo County. Particular attention should be paid to the mandatory time requirements of Rule 317(a), which states unless otherwise ordered or specifically provided by law, all moving and supporting papers must be served and filed at least fifteen (15) calendar days, all papers opposing the motion at least five (5) Court days, and all reply papers at least two (2) Court days before the time appointed for the hearing.

(b) All filings must be accompanied by the appropriate filing fee. Fees and exemptions are set forth in Government Code Sec. 26820 et seq. The words "Probate Code Sec. 10400" must be inserted in title of each subsequent paper to qualify for fee waiver under Independent Administration of Estates Act. (Government Code Sec. 26827.4.) (Amended eff. 7/1/2002)

**RULE 11.105  
FORM OF PAPERS PRESENTED FOR FILING**

(a) Papers presented for filing with the Clerk must conform to California Rules of Court 201.

(b) Use of forms which are ADOPTED by the Judicial Council are mandatory. The latest printed forms which have been APPROVED by the Judicial Council must be used where

applicable. If the approved forms cannot be used without substantial alteration, counsel are requested to prepare their own documents using the printed forms as a guide.

(c) All filings must include an original and one (1) copy if petitioner/counsel require a conformed copy.

(d) Unless petitioner/counsel provides the Clerk with a stamped, self-addressed envelope, copies of filed documents will be placed in a will call-pick up folder at the Clerk's office. (Amended Eff. 7/1/2002)

**RULE 11.106**

**HEARING DATE REQUIRED ON DOCUMENTS**

The date, time and department of the hearing must be placed immediately below the case number on the first page of every document filed which relates to a matter set for hearing. Documents which do not conform with this rule will be rejected for filing. (Amended Eff. 7/1/2002)

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**RULE 11.107****SIGNING AND VERIFICATION OF PLEADINGS**

(a) Pleadings, reports and accounts must be signed by the attorney and each personal representative, trustee, guardian or conservator. Such filings must be verified by a personal representative, trustee, guardian or conservator personally and not by the attorney.

(b) If the petitioner, objector or respondent is not a fiduciary appointed in the proceeding and is absent from the county or for some other reason unable to sign or verify the petition, objection or response, the person's attorney may sign or verify the same as set forth in Probate Code Sec. 1023. (Amended Eff. 7/1/2002)

**RULE 11.108****AMENDMENTS TO AND AMENDED PLEADINGS****(a) Amended Pleading**

An amended pleading is a pleading which supersedes the original thereof and speaks only of things which occurred either before or concurrently with the commencement of the action; it may be allowed "of course" or upon motion. An amended pleading must be calendared, posted and noticed in the same manner as the pleading it supersedes. An amended pleading must be clearly designated as amended in the caption on the first page of the pleading.

**(b) Amendment to Pleading**

An amendment to a pleading is the correction of an error committed. Its purpose is to correct, improve or rectify something deficient or defective in the original pleading, not to substitute a new for an old. Copies must be served by counsel on all parties who were served with the initial pleading if there is a substantive change. The amendment will not be calendared separately but will be heard on the date and time set for hearing on the initial pleading. An amendment to a pleading must designate the pages and lines of the pleading being amended. An amendment must not be made by alterations on the face of a pleading except with permission of the Court.

**(c) Supplemental Pleading**

A supplemental pleading is one alleging facts material to the action occurring since the commencement of the action. Leave of Court must be obtained prior to the filing of a supplemental pleading. A supplemental pleading must be calendared, posted and noticed in the same manner as an original pleading. A "Supplement to a Pleading" does not exist and will not be accepted. (Amended Effective 7/1/2002)

**RULE 11.109****PREAPPROVED MATTERS**

(a) A matter that by law may be determined upon verification and without testimony may ordinarily be submitted for appropriate action by the Court without appearance by counsel or witnesses provided. The Judge or Commissioner assigned to the Probate Calendar will review all documents prior to hearing and may tentatively approve all matters which are in proper form and to which no objections have been made. Such matter must be assigned to the preapproved matter list.

(b) The Probate Clerk is authorized to release the name and numbers of matters preapproved by the court. See Rule 11.102 for the telephone number of the recorded message for preapproved matters. The recorded message can be assessed 24 hours a day beginning after 12:00 p.m. one (1) court day prior to the scheduled hearing and will include the courtroom and name of the judge who is calling the calendar.

**(c) Objection to Approved Matters**

If the petitioner does not appear at the time the matter is called, and if objection is made at the time the approved calendar is called, the Court must continue the matter for a reasonable time to allow for the filing of written objections. If written objections are not on file by the new hearing date, the matter will proceed. (Amended Eff. 7/1/02)

**RULE 11.110****CONTINUANCES**

The continuance policy of this Court in probate matters is liberal, but unexplained or unnecessary successive continuances must cause the matter to be taken off calendar and require the same to be renoticed. In uncontested matters, counsel may request a continuance by telephone to the Probate Clerk. Pursuant to Probate Code Sec. 1205, if a hearing is continued, no further notice is required unless ordered by the court. (Amended Eff. 7/1/02)

**RULE 11.111****CONTESTED MATTERS****(a) Oral Objections**

If an oral objection to any matter before the Court is made by a person appearing at the hearing at the time a matter is called, the Court may continue the hearing for a reasonable time to

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allow the filing of written objections. If written objections are not filed within the prescribed time, the matter will proceed to hearing over the objection.

**(b) Trial of Contested or Lengthy Matters**

The Court may transfer all contested matters or matters with time estimates of more than 30 minutes for hearing to the Department of the Presiding Judge who will then assign those matters for hearing in the same manner as civil trials are assigned.

**(Amended eff. 7/1/2002)**

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**RULE 11.112**

**LAW AND MOTION PROCEDURES**

Refer to San Luis Obispo County Local Court Rules, Chapter 7 Civil (Law and Motion) Hearing, Procedures and Probate Code Sec. 1000. (Eff. 7/1/00)

**PART TWO  
NOTICES**

**RULE 11.201**

**PREPARATION OF NOTICES**

All notices required by the Probate Code to be given by the Clerk must be prepared by the attorney. (Amended eff. 7/1/2002)

**RULE 11.202**

**ADDITIONAL NOTICE**

Under the provisions of Probate Code Sec. 1202, the Court may require additional or further notice on any matter. Such notice will be required whenever it appears that the interest of any person may be adversely affected by the determination of the issues raised by the pleadings.

**RULE 11.203**

**NOTICE: BY WHOM GIVEN**

The Clerk must be responsible for publication of notice where required. The petitioner or the petitioner's attorney must prepare all notices required to be published and must provide the same by original and one (1) copy to the Clerk. Where notice by mail is required to be given, petitioner or petitioner's attorney must give the matter the notice and file a proper proof of service. (Amended Eff. 7/1/2002)

**RULE 11.204**

**NOTICE BY PUBLICATION OF NOTICE OF PETITION TO ADMINISTER ESTATE**

The published notice of Petition to Administer Estate is sufficient to include only those instruments which are offered for probate and specifically referred to in the petition for which the notice is given. Any other will or codicils not specifically mentioned in the petition must be presented to the Court in an amended petition or second petition, and a notice of hearing must be published. See Appendix A for newspapers of general circulation in San Luis Obispo County. (Amended eff. 7/1/02)

**RULE 11.205**

**NOTICE BY POSTING**

The moving party must prepare and submit to the Clerk as many copies of the notice as the Clerk is required to post.

**PART THREE  
APPOINTMENT OF EXECUTORS AND ADMINISTRATOR**

**RULE 11.301**

**DECLINATION TO SERVE**

If the person named in the decedent's will as executor declines to act as such, his written and signed declination to act must be filed with the Court unless evidence is produced that he is incompetent or refuses to act. (amended eff. 7/1/2002)

**RULE 11.302**

**MULTIPLE REPRESENTATIVES**

If a petition is filed requesting letters be issued to two or more executors or administrators in which one or more of the named persons for whom letters are sought is not a petitioner, a consent to act, signed by each non-petitioning person for whom letters is sought, must be filed with the Court. (amended effect. 7/1/02).

**RULE 11.303**

**INDIVIDUALS TO BE NAMED IN THE PETITION**

In the petition for letters, each of the following must be listed and named:

(a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner, (including those who might be heirs by virtue of Probate Code Secs. 21114, 21115 and 6400 et seq.), setting forth their names, age addresses and relationships to the decedent.

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(b) Each devisee and executor named in any will being offered for probate even if the gift to such person or the appointment of such executor has apparently been revoked.

(c) Trust beneficiaries, the trustee of a trust or guardian nominated in a will, and any other known trustee or guardian.

(d) If the decedent left no spouse or issue, the heirs of a predeceased spouse who would inherit as provided by Probate Code Sec. 6400 et seq. (Eff. 7/1/00)

**RULE 11.304****COPY OF WILL TO BE ATTACHED TO PETITION FOR PROBATE**

(a) A petition for letters must have a photocopy of the will attached at the time of filing the petition. The original will must be submitted at the time of filing unless previously lodged with the Court for safekeeping.

(b) If the will is holographic, in addition to a photocopy, a typewritten copy of the will must also be attached to the petition. (Eff. 7/1/00)

**RULE 11.305****PROOF OF WILL**

(a) Unless there is a contest of a will, proof of a will must conform to the requirements of Probate Code Sec. 8220 et seq.

(b) In uncontested will proceedings, if the attestation clause is signed under penalty of perjury and meets the requirements of Probate Code Sec. 6110 et seq., the will is self proving and may be admitted to probate without an affidavit or declaration. Otherwise, if the will or codicil is witnessed, the moving party must file a Proof of Subscribing Witness with a copy of the will or codicil attached.

(c) If the testimony of a subscribing witness to a will or any other witness impeaches the due execution of the will, a continuance will be ordered; and the other subscribing witness or witnesses to the will who can with due diligence be found must be subpoenaed by the proponent to appear before the Court at the continuance date and testify respecting the execution of the will.

(d) The Court prefers that both formal witnessed wills and holographic wills be proven by declaration rather than by testimony. (Eff. 7/1/00)

**RULE 11.306****BOND**

(a) Bond must be required in all cases, except as otherwise provided by statute. (Probate Code Secs. 8480 and 8481(a)(1)).

(b) If a verified petition for letters alleges that all beneficiaries or heirs have waived the filing of a bond, and the petitioner requests appointment without bond, such waiver(s) must be in writing and timely filed prior to the hearing. Waiver of the bond by heir(s) or beneficiary(s) pursuant to Probate Code Sec. 8481(a)(2) will be considered by the Court and permitted on a case by case basis.

(c) An executor nominated to serve without bond who is a nonresident of California may nevertheless be required to post such bond as the Court may require. Probate Code Sec. 8571.

(d) Upon the filing of the Inventory and Appraisal, the personal representative or the attorney for the estate must declare on the face thereof whether bond is required and whether the amount posted is adequate. If the bond is ~~sufficient~~ *insufficient*, the personal representative must immediately obtain and file an additional bond, thereby increasing the bond to the amount required by Probate Code Sec. 8482.

(e) When a reduction of bond proceeding is initiated, counsel must obtain a proof of deposit confirming the deposit of securities and/or money subject to removal from the depository only upon order of the Court. Such proof must be filed with the Clerk before the reduced bond is filed. ~~Local Form "Receipt of Depository" meets the Court's requirement and is available at the Clerk's office. (Eff. 7/1/00)~~ *Judicial Council forms: MC-355, Order To Deposit Money Into Blocked Account, and MC-356, Receipt And Acknowledgment Of Order For The Deposit Of Money Into Blocked Account are available at the Clerk's Office or can be found on the California Courts website at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov). (Amended eff. 7/1/2002)*

**RULE 11.307****FORM REQUIRED FOR APPOINTMENT OF PERSONAL REPRESENTATIVE**

The Judicial Council has adopted a form entitled "DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE." Before letters are issued, the original form, signed by the personal representative stating that he or she had received and read the same, must be filed with the Court by the personal representative, other than a trust company or a public administrator Probate Code Sec. 8404. (Eff. 7/1/00)

**RULE 11.308****PETITION FOR APPOINTMENT OF SPECIAL ADMINISTRATOR**

(a) A petition for appointment of a special administrator may be granted by the Court upon application made pursuant to the Provisions of Probate Code Sec. 8540 et seq. In an emergency, Letters of Special Administration may be granted, ex parte, upon notifying all interested parties no later than 10:00 a.m. the court day before the ex parte appearance. The petitioner must contact the

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~~Court's Secretary for an appointment~~ Superior Court to set a hearing with the Probate Judge. Ex parte applications must be made in compliance with California Rules of Court 379(b).

(b) The party seeking Letters of Special Administration must give notice of the application to the surviving spouse, the person(s) nominated as executor(s), other persons who seek or might be expected to seek letters, and any other person who appears to be equitably entitled to notice, unless on good cause shown the Court orders otherwise. The petitioner also must file a petition for permanent letters before special letters of administration must be issued, or there appears in the petition a showing of good cause why a petition for permanent letters has not been filed.

(c) In making the appointment, preference is given to the person entitled to letters testamentary or of administration. If it appears that a bona fide contest exists, the Court will consider the advisability of appointing the public administrator or a neutral person or corporation as special administrator. (Amended Eff. 7/1/02)

#### **RULE 11.309**

##### **ANCILLARY PROBATE**

(a) If a nondomiciliary decedent's will has been admitted to probate in a sister state or foreign nation, the will may be probated in an ancillary administration proceeding brought under Probate Code Sec. 12510 et seq.

(b) A petition to probate a foreign will must have attached a certified copy of the will and a certified copy of the order or decree admitting the will to probate outside this jurisdiction. If the will has been admitted to probate in a foreign country, the copies must be certified in the manner set forth in Sec. 1530 of the Evidence Code.  
(Eff. 7/1/00)

### **PART FOUR OTHER MOTIONS AND PETITIONS**

#### **RULE 11.401**

##### **PETITION FOR EX PARTE ORDER**

(a) If because of the apparent emergency nature of an application, the Court elects to consider the matter ex parte, but the need for an opportunity to be heard is apparent, the Court will require moving counsel to notify all parties no later than 10:00 a.m. the court day before, absent a showing of exceptional circumstances, of the nature of the application to counsel who represent the other interested parties, or in the absence thereof to the other interested parties themselves. Any such petitions must comply with California Rules of Court 379(b). Before the hearing is held, moving counsel must submit a declaration to the Court setting forth facts relating to the efforts to give such notice, if any, or facts supporting the conclusion that it was impossible to give such notice.

(b) An ex parte order will not be granted unless accompanied by a petition (or affidavit where applicable) containing facts to justify granting the prayer.

(c) All petitions for ex parte orders must contain an allegation that no request for Special Notice has been filed. If any such notice has been filed, an ex parte order will not be considered unless accompanied by a properly executed waiver of notice.

(d) Petitions for an ex parte order for sale of stock or personal property must allege whether the property is specifically bequeathed. If bequeathed, the consent of the specific legatee to the sale must accompany the petition.

#### **RULE 11.402**

##### **PETITION FOR INSTRUCTIONS**

(a) The use of a Petition for Instructions by personal representatives pursuant to Probate Code Sec. 9611, is limited to those matters where no other or different procedure is provided by statute.

(b) The Petition for Instructions should set forth the matter on which the personal representative desires instructions in precise detail. The petition must be accompanied by a proposed order which set forth the instructions in clear and explicit language.

#### **RULE 11.403**

##### **FAMILY ALLOWANCE**

(a) Requests for a family allowance should be made in a timely fashion and conform with the requirements of Probate Code Sec. 6540 et seq. Ex parte petitions for a family allowance for the benefit of the surviving spouse and/or minor children will be accepted if presented before the filing of the Inventory. Ex parte petitions from a person other than the personal representative will not be accepted without the written consent of the personal representative.

(b) A Petition for Family Allowance made more than six (6) months after the personal representative has qualified must be noticed and placed on the regular probate calendar. A Petition for Family Allowance for the benefit of persons other than the surviving spouse and/or minor

children will be heard on the regular probate calendar after notice has been given pursuant to Probate Code Sec. 6541(c).

(c) The duration of an order for family allowance must not exceed six (6) months. For good cause shown in writing, such orders may be renewed. The order must state the commencement date and the specified period of payments.

(d) The application for an allowance must include at least the following data:

(1) The applicant's expenses and income from sources outside the estate;

(2) An itemized list of the applicant's assets, and a statement of the appropriate value of each;

(3) A general statement of the assets and of the liabilities of the estate;

(4) A general statement of other applications (if any) on file for allowances; and

(5) If the petitioner is someone other than the personal representative, the petition must be accompanied by either a consent to the allowance or a waiver of notice signed by the personal representative. (Amended eff. 7/1/2002)

#### **RULE 11.404**

##### **PETITION FOR DISTRIBUTION ENTITLEMENT**

Petition to determine entitlement to distribution of any part of an estate must be made in conformance with the requirements of Probate Code Sec. 11700 et seq. Notice must be given in the manner prescribed in Probate Code Sec. 11701. (Amended eff. 7/1/2002)

### **PART FIVE ORDERS**

#### **RULE 11.501**

##### **PREPARATION OF ORDERS**

For an order to be included in the file for signature at the time of the hearing, it must be submitted to the Clerk at the time the petition is submitted, or no later than five (5) court days prior to the hearing.

An order not presented for signature at time of the hearing must be presented within five (5) days thereafter and must include in the caption and in the first paragraph a recitation of the date, time and department of the hearing. (Amended eff. 7/1/2002)

#### **RULE 11.502**

##### **WORDING**

Orders must be worded so that their general effect may be determined without reference to the petition on which they are based. All orders must be complete in themselves. All matters actually passed on by the Court, including the relief granted, the names of persons and description of property (and if real property is involved, the legal description and common address thereof), amount of money affected, the terms of trusts, and the provisions of other agreements, must be set forth with the same particularity required of judgments in civil matters. (Amended eff. 7/1/2002)

#### **RULE 11.503**

##### **CONTINUING PAYMENTS -- TIME LIMIT**

The Court does not favor orders for continuing payments to run until the further order of the Court. All such orders must provide that payments commence as of a particular date and continue to a date certain. (Amended eff. 7/1/2002)

#### **RULE 11.504**

##### **ORDERS CORRECTING CLERICAL ERRORS**

If, through inadvertence, the minute order or the signed decree fails to state the order actually made by the Court, the Court will on motion, which normally must be supported by an affidavit or declaration, make an order correcting the mistake. The nunc pro tunc order should not take the form of a complete amended order but should be substantially in the following form: "Upon consideration of the affidavit or declaration of \_\_\_\_\_, to correct a clerical error, the \_\_\_\_\_ (title of the order to be corrected, giving the date thereof) is corrected on the Court's own motion by striking the following: "\_\_\_\_\_" and inserting in lieu thereof: "\_\_\_\_\_".

The original order must not be physically changed by the Clerk, but must be used in connection with the nunc pro tunc order correcting it. To prevent further errors, not less than a complete clause or sentence should be stricken, even if it is intended to correct one word or figure. (Amended eff. 7/1/2002)

#### **RULE 11.505**

**ORDER PRESCRIBING OR DISPENSING WITH NOTICE**

An order prescribing or dispensing with notice should be submitted to the Court before the petition is filed. The proposed order should be accompanied by a declaration and points and authorities in support of the order.

**PART SIX  
INVENTORY AND APPRAISAL****RULE 11.601****INVENTORY AND APPRAISAL - PERIOD TO FILE**

Probate Code Sec. 8800 requires the Inventory and Appraisal to be filed within four (4) months after appointment of the personal representative or within such further time as the Court may allow after a showing of good cause. If the personal representative neglects or refuses to file the inventory within the time prescribed, the Court, on petition, may revoke the personal representative's letters and/or impose personal liability on the personal representative. Probate Code Sec. 8804.

**RULE 11.602****STATEMENT REGARDING - BOND ON INVENTORY AND APPRAISAL**

The personal representative or the attorney for the estate must declare on the face of the Inventory and Appraisal whether bond is required and whether the amount posted is adequate. If the bond is insufficient, the personal representative must immediately file an additional bond, thereby increasing the bond to the amount required by Probate Code Sec. 8482.

**RULE 11.603****GUIDE FOR PREPARATION OF INVENTORY AND APPRAISAL**

The Inventory and Appraisal must conform to the requirements of Probate Code Sec. 8850, 8852 and Sec. 8900 et seq. Each inventory item must be clearly and concisely described in the manner described in the current version of the Probate Referees' Procedures Guide published by the California Probate Referees' Association. In the case of real property, the full legal description and common address must be included.

**RULE 11.604****PROPERTY TAX CERTIFICATION**

Pursuant to Probate Code Sec. 8800(d), the personal representative must comply with the requirements of Revenue and Taxation Code Sec. 480. This must be satisfied by completing the Property Tax Certification section on the Inventory and Appraisal, or, by completing the Judicial Council Property Tax Certification form.

**PART SEVEN  
CREDITORS CLAIMS****RULE 11.701****NOTICE TO CREDITORS**

If, within four (4) months after the date letters are first issued to a general personal representative, the personal representative has knowledge of a creditor of the decedent, the personal representative must give notice of administration of the estate to the creditor. Probate Code Sec. 9050. The notice must be completed on the form approved by the Judicial Council and if filed with the Court, must include a cover sheet in conformance with the Calif. Rules of Court Rule 210.

**RULE 11.702****FORM OF CLAIM**

Claims must be submitted on the form approved by the Judicial Council. Pursuant to Probate Code Sec. 9150(b), the claimant must file the original claim with the Court and mail the personal representative a copy.

**RULE 11.703****REQUIRED ACTION**

All filed claims must be acted on by the personal representative of the estate and it is the duty of the attorney for the estate to see that all claims filed are ultimately approved or rejected, in proper form, duly verified, and contain sufficient detail to enable the Court to act on them.

**RULE 11.704****LISTING OF CREDITORS' CLAIMS**

In a report accompanying an account or in a report where an accounting is waived, it is not sufficient to merely allege that all claims have been paid. The claims presented must be listed and show: the name of each claimant, the amount claimed, the date presented, the date allowed, the date paid if the claim has been paid and the amount paid. If any claim has been rejected, the date of service of notice of rejection of claim, if such notice was given, must be stated; and any known suit on the rejected claim must be identified.

**PART EIGHT  
SALES**

**RULE 11.801**

**SALE OR ENCUMBRANCE OF SPECIFICALLY DEVISED OR BEQUEATHED PROPERTY**

No specifically devised or bequeathed real property must be encumbered or offered for sale unless first approved by the Court after not less than fifteen (15) days notice to the specific devisee, or unless the consent of the devisee is on file.

**RULE 11.802**

**APPRAISAL OF REAL PROPERTY WITHIN ONE YEAR**

Real property must have been appraised within one year of the time of sale. Since the first appraisal reflects the value at the time of death of the decedent, if the date of death is more than one year prior to the date of sale, a reappraisal for sale is required. Probate Code Sec. 10309(a)(1).

**RULE 11.803**

**PUBLISHED NOTICE OF INTENTION TO SELL REAL PROPERTY**

Unless excused by the provisions of Probate Code Sec. 10300, a publication of notice of intention to sell real property of the estate is required.

**RULE 11.804**

**DESCRIPTION OF PROPERTY**

All legal notices for the sale of real property and the petition for confirmation of sale must contain, in addition to the legal description, the common street address of the property. If there is no common street address, some indication of the location of the property must be included.

**RULE 11.805**

**EXCLUSIVE RIGHT TO SELL REAL PROPERTY**

If the personal representative does not have powers granted under the Independent Administration of Estates Act, the personal representative may apply for Court authority to grant a real estate broker an exclusive right to sell the estate's real property for limited periods of time. Probate Code Sec. 10150. The court may grant the petition upon proof of necessity or advantage to the estate. A copy of the proposed agreement with the broker must be attached to the petition. Said agreement must provide for the payment of a commission to the broker holding the listing upon court approval. Probate Code Sec. 10160 et seq.

**RULE 11.806**

**CONFIRMATION OF SALE**

Petitions to confirm sales of real property must be on the Judicial Council approved forms.

**RULE 11.807**

**PRESENCE OF PURCHASER NAMED IN PETITION AT CONFIRMATION**

(a) A sale to the increased bidder in Court could be set aside by the original purchaser who was justified in believing he did not have to appear in Court to protect his purchase. Counsel should inform the original purchaser of the time and place of hearing and advise him or his agent to be in Court on the day of sale.

(b) The original purchaser, or his/her agent if the original purchaser's address is not known, must be given notice of the petition to confirm sale of real property and proof of service of same must be filed with the Court prior to the date of confirmation of sale.

**RULE 11.808**

**DEPOSIT TO ACCOMPANY OVERBID AND OVERBID FORMS**

(a) No bid for the purchase of real property will be acceptable unless the personal representative or the attorney for the estate informs the Court that the bid is acceptable.

(b) When an overbid is made in Court, the overbidder must submit to the Court, at the hearing at the time the overbid is made, a certified or cashier's check, in an amount equal to ten

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(10) percent of the first allowable minimum overbid, or such lesser amount as the personal representative shall approve.

(c) When there is a successful overbid in open Court on a sale of real property, counsel must complete, and the successful bidder must sign, an overbid form which is available from the courtroom clerk and may be handwritten in this circumstance, and file the same. The Order Confirming Sale of Real Property will not be signed unless the form is filed.

**RULE 11.809**

**CONDITIONAL SALES OF REAL PROPERTY**

The Court will ordinarily not approve a sale of real property which is conditioned upon the occurrence of a subsequent event (such as change in zoning). However, if unusual and extraordinary circumstances exist and the necessity and advantage to the estate are set forth in detail, the Court may approve such a sale.

**RULE 11.810**

**SALES OF REAL PROPERTY WHEN BUYER ASSUMES ENCUMBRANCE**

Sales of real estate will not ordinarily be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The return should set forth the facts pertinent to such assumption agreement and any contingent liability.

**RULE 11.811**

**BOND ON SALE OF REAL PROPERTY**

(a) Petitions for confirmation of sale of real property must set forth the amount of bond in force at the time of sale and the amount of property in the estate which should be covered by bond. If no additional bond is required, or if bond is waived, that fact should be alleged. A secured promissory note taken as part of the consideration is personal property and an additional bond must be fixed in the amount of such note plus whatever cash is paid.

(b) If the sale proceeds are to be deposited in whole or part into a blocked account, the details must be set forth in the petition for confirmation of sale. ~~Local Court Form "Receipt of Depository" is available at the Clerk's office, and upon filing, meets the Court's requirement that the funds have been received by the depository and may be withdrawn only upon Court order.~~ *Judicial Council Forms: MC-355, Order to Deposit Money Into Blocked Account, and MC-356, Receipt And Acknowledgment Or Order For The Deposit Of Money Into Blocked Account are available at the Clerk's Office or can be found on the California Courts website at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).*

**RULE 11.812**

**BROKER'S COMMISSION ON SALE OF REAL PROPERTY**

(a) Upon the confirmation of the sale of real property, a broker's commission in excess of 6 percent of the gross sales price will not be allowed except in unusual cases when a larger commission is justified because of exceptional circumstances.

(b) A broker bidding for his own account is not entitled to receive or share in a commission.

(c) In overbid situations, broker's commissions must be determined in accordance with Probate Code Sec. 10160 et seq.

**RULE 11.813**

**PERSONAL PROPERTY - APPRAISAL BEFORE SALE**

Except in the case of perishable property or depreciating property, sales of personal property will not ordinarily be approved or confirmed unless the property has been appraised. When necessary, a partial inventory and appraisal may be filed for this purpose, or a letter appraisal obtained from the probate referee for the estate wherein he states that he has inspected the property and declares its value.

**PART NINE  
ACCOUNTS AND REPORTS**

**RULE 11.901**

**ACCOUNTS**

**(a) Form of Account**

All accounts filed in probate proceedings, including estates, guardianship, conservatorship and trust accounts must conform to the requirements of Probate Code Sec. 1060 et seq. and 10900. Accounts must be typewritten or machine printed on letter sized pages numbered at the bottom of each page and meet the requirements provided in Chapter 4 (commencing with Sec. 1060 of Division 3, Part 1 of the Probate Code).

**(b) Summary of Account**

Each account must state the period covered by the accounting, and contain a summary as set forth in Probate Code Sec. 1061 et seq.

(1) Appendix B is a suggested Form of Summary of Account showing principal and income breakdowns as required if making a distribution to a trust.

**(c) Accounts of Personal Representatives**

All accounts of personal representatives must conform to the requirements set forth in Probate Code Secs. 1060 et seq. and 10900 and, as nearly as possible, in the forms suggested in Chapter 19 of California Decedent Estate Practice. (CEB)

**RULE 11.902****TRUST AND SPECIFICALLY DEVISED PROPERTY**

(a) If a part of the estate is distributable to a trustee with income accumulated during administration of the estate payable by the trustee to trust beneficiaries, receipts and disbursements during probate should be allocated between principal and income in the account.

(b) If property is specifically devised, the accounting should set forth both income received and expenses allocable to each such item of property separately so the net income or loss allocable to each specific devise can be ascertained. See Probate Code Sec. 12001 et seq.

**RULE 11.903****WAIVER OF ACCOUNT**

(a) The Court will approve a distribution without an account only when all of the following conditions have been met as to each person entitled to distribution from the estate: the person has executed and filed a written waiver of account or a written acknowledgment that the person's interest has been satisfied; and the conditions set forth in Probate Code Sec. 10954 have been satisfied.

(b) Notwithstanding the waiver of account, the personal representative must file a final report of administration at the time the final account would otherwise have been required. Said final report must include the amount of fees and commissions paid or payable to the personal representative and to the attorney and must set forth the basis for determining the amount. See 11.1003.

**RULE 11.904****VOUCHERS**

Vouchers supporting accounts are not to be filed with the Clerk unless the Court orders them filed.

**PART TEN  
FEES AND COSTS****RULE 11.1001****FEES AND COMMISSIONS IN GENERAL**

(a) Fees, commissions and compensation to fiduciaries and their attorneys must be just and reasonable in amount. The Court will make a determination of what is just and reasonable upon the basis of the information provided to the Court in a petition requesting allowance of fees or commissions. In this respect, there must be no distinction between decedent's estates, guardianships, conservatorships or trusts which are subject to court supervision or are otherwise before the Court

(b) Other than for statutory fees and commission in probate matters, the petition requesting allowance of fees or commissions must include a description of the nature of the services rendered with particularity, the time expended thereon, the person who performed the service, and the amount of compensation requested for each service. The Court will consider, but not be bound by, an agreement for extraordinary fees between the attorney and the client.

**RULE 11.1002****FEES AND COMMISSIONS IN ADVANCE****(a) Decedent's Estates**

Payment of any commissions or fees to the personal representative or the attorney in advance of a Court order is not authorized, not even payment of statutory fees or commissions. Representatives or attorneys violating this prohibition may be surcharged such reasonable sums as the Court in its discretion shall fix.

A petition for partial allowance on statutory compensation and/or compensation for extraordinary services filed prior to the petition for final distribution, must comply with the requirements of Probate Code Sec. 10830 and/or 10832, and must contain a recital of the work

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actually completed. Ordinarily the last twenty-five (25) percent of the statutory compensation and/or compensation for extraordinary services will not be allowed prior to approval of the final accounting; however, upon a proper showing that it would be beneficial to the estate or to the distribution (for example, reduction of income taxes in a given fiscal period), the twenty-five (25) percent reserve may be reduced or dispensed with.

**(b) Guardianships and Conservatorships**

Fees of guardians and conservators and their attorneys must be paid after the services have been performed to which they relate and require prior court approval upon a petition filed. Probate Code Sec. 2640 et seq. (See Rule 11.1006) Periodic payment of fees or commissions may be made only upon prior Court approval given upon a petition filed under Probate Code Sec. 2643. The periodic payments must only be paid after the services have been performed for which the fees were requested.

**(c) Trusts**

Fees of trustees and their attorneys must be paid after the services have been performed to which they relate, and upon showing of good cause, periodic compensation as the Court shall fix. Probate Code . 15682.

**RULE 11.1003**

**FEES AND COMMISSIONS DECEDENT'S ESTATES**

(a) In decedent's estates, when no compensation is provided in the will, the personal representative must be allowed statutory fees and commissions set forth in Probate Code Sec. 10800.

(b) Where an accounting is waived, the statutory commission and fee is limited to the inventory value of the estate plus or minus gains or losses on sales.

(c) In a petition for distribution, whether or not accompanied by an accounting, there must be set forth the basis upon which fees are requested and a calculation of the statutory compensation of the personal representative and the attorney. See Appendix C for suggested form of request.

(d) Statutory fees and commissions will not be allowed for services rendered with respect to assets not subject to probate such as life insurance proceeds or annuities paid to a named person, or termination of life estates or joint tenancy.

**RULE 11.1004**

**ORDINARY SERVICES COMPENSATED BY STATUTORY FEES**

The Court views those services set forth in Appendix D as ordinary services for conducting probate proceedings by the personal representative and the attorney for which no extraordinary fee will be allowed.

**RULE 11.1005**

**EXTRAORDINARY FEES AND COMMISSIONS IN ESTATES**

(a) Extraordinary fees and commissions may be allowed to the personal representative or attorney for such matters as sales, leases, borrowing, litigation (including contested probate matters), tax matters (including preparation of returns, audits and tax litigation), operating a business, heirship proceedings and the performance of any other act resulting in extraordinary benefit to the estate or requiring an extraordinary expenditure of the time or other special services as may be necessary for the personal representative or attorney to perform.

(b) It is the policy of the Court to allow compensation which would be paid by persons competent to contract for themselves and as are reasonable and customary in the community for such services. In order to assist the Court in its determination, each item that constitutes an extraordinary service must be individually stated in the petition with a specific fee request for each such service. Following are suggested, but not exclusive, guidelines of the Court to be used in making its determination:

- (1) The benefits which inured to the estate.
- (2) Amount of money or value of property involved in the transaction.
- (3) Whether the matter was routine or involved a unique matter of substantial legal or practical difficulty.
- (4) Knowledge and experience of personal representative or attorney and how this relates to the extraordinary services.
- (5) Whether an expert was retained in connection with the rendering of particular services, such as a broker or certified public accountant.
- (6) Duration of the probate administration.
- (7) A detailed description of services rendered by date.
- (8) A detailed description of any legal research required on a unique or different issue.
- (9) The time devoted to the services described.

(10) Amount of the statutory fee and the time required to administer all matters pertaining to the estate.

**RULE 11.1006****COMPENSATION IN GUARDIANSHIPS, CONSERVATORSHIPS AND TRUSTS**

(a) The Probate Code provides for just and reasonable compensation for guardians, conservators, trustees and their attorneys. The Court will consider the same factors set forth in Rule 11.1005, pertaining to allowance of extraordinary fees and commissions, to the extent the same are relevant, in determining such compensation.

(b) When compensation is requested by a guardian, conservator, or trustee, the Court will require the guardian, conservator, or trustee, to set forth in detail, the type and nature of the services provided, the hours expended, and the date the services were performed.

(c) No petition for fees will be considered until the Inventory and Appraisal has been filed. Any petition for fees made pursuant to Probate Code Sec. 2640 before the filing of the first accounting must contain a complete and detailed statement of the services rendered which support the fee requested.

(d) The additional powers granted to a conservator or guardian under Probate Code Sec. 2591(q) do not confer authority for the conservator or guardian to pay fees to their attorney of record without first obtaining prior court approval.

**RULE 11.1007****"ONE - FEE" RULE**

Unless approved by the Court in advance as being to the advantage, benefit and best interest of the estate, minor or conservatee, an attorney who receives a fiduciary's commission must not be awarded an attorney's fee or be allowed to share in any attorney's fees which may be paid to that attorney's law firm. In situations where the one-fee rule is applicable, an agreement which shows compliance with the rule must be filed with the Court.

**RULE 11.1008****NOTICE TO PRIOR REPRESENTATIVE OR ATTORNEY**

If there has been a change of personal representative or fiduciary or a substitution of counsel, notice of hearing must be given to such prior representative, fiduciary or counsel of any petition in which fees or commissions are requested by the present personal representative, fiduciary or counsel unless:

(1) A waiver of notice executed by the prior personal representative, fiduciary or counsel is on file;

(2) An agreement on the allocation of fees and/or commissions is on file or included in the petition; or

(3) The file and the petition demonstrate that the fees and/or commissions of the prior personal representative, fiduciary, or counsel have been previously provided for and allowed by the Court.

**RULE 11.1009****REIMBURSEMENT FOR COSTS ADVANCED**

If counsel or the fiduciary seek reimbursement for costs, such costs must be itemized in the petition.

**PART ELEVEN  
DISTRIBUTION AND DISCHARGE**

**RULE 11.1101****PETITION OR STATUS REPORT REQUIRED - FILING TIME**

Within one year from the date of issuance of letters in estates not required to file a federal estate tax return and within 18 months from the date of issuance of letters in estates where such return is required, the personal representative must either petition for final distribution of the estate or file a verified report of status of administration. If a report is filed, it must show the condition of the estate, the reasons why the estate cannot be distributed and closed, and an estimate of the time needed to close administration of the estate. Probate Code Sec. 12201.

**RULE 11.1102****REQUIRED ALLEGATIONS IN PETITION FOR PRELIMINARY AND FINAL DISTRIBUTION**

In addition to other items required by law, a petition for preliminary and final distribution must contain the following:

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